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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

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PEGGY KROPP,

Plaintiff and Appellant,

v.

CALIFORNIA HIGHWAY PATROL,

Defendant and Respondent.

C064297

(Super. Ct. No. CVPT080002987)

Plaintiff Peggy Kropp sued defendant California Highway Patrol (CHP) for intentional infliction of emotional distress, invasion of privacy, and violation of her constitutional rights by coercion. The lawsuit was based on conduct of CHP personnel while Kropp was working as the manager of a nonprofit store at the CHP academy in West Sacramento. The CHP filed a special motion to strike the complaint under Code of Civil Procedure section 425.16.<sup>1</sup>

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<sup>1</sup> The lawsuits targeted by this statute are commonly referred to as strategic lawsuits against public participation or SLAPP

The trial court granted the motion, finding that the causes of action arose from protected activity and Kropp failed to demonstrate a probability of prevailing on her claims. On Kropp's appeal from the grant of the motion, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

The CHP Academy Recreation Fund (the fund) was incorporated as a nonprofit entity "[t]o provide personal needs and supplementary recreational facilities" to CHP cadets, trainees, and others "through the operation of a nonprofit purchase and sales agency."

The fund is governed by bylaws that establish membership in and operation of the fund. Membership in the fund is automatic when a person becomes a member of the CHP. There are approximately 10,000 to 15,000 members in the fund. Exercise of the fund's power is vested in a board of five directors (the fund's board). The fund's board has the power to appoint and remove employees, set compensation, and "oversee the affairs and business of the corporation," and to "do all things necessary and proper for the control, management and operation of the corporation, its property and its affairs." A quorum, which consists of a majority of the fund's board, is needed to transact business. The president of the fund's board was Warren

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lawsuits. (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 71-72.) Code of Civil Procedure section 425.16 is commonly referred to as the anti-SLAPP statute. (*City of Cotati*, at p. 72.)

All further section references are to the Code of Civil Procedure.

Stanley, a commander of the CHP academy in West Sacramento. Stanley's "superior" was CHP Chief Jim McLaughlin, who was not a member of the fund's board. CHP Lieutenant Scott Lynch was a member of a fund's board.

The fund derives its income from the operation of the CHP Academy Post Exchange (post exchange), a store at the CHP academy in West Sacramento. According to the fund's bylaws, operation of the post exchange is an "activit[y] engaged in by the corporation." Profits from the post exchange are used to purchase and maintain equipment at the CHP academy. Kropp was the retail manager of the post exchange.

In July 2005, several CHP personnel, including Stanley and McLaughlin "acting on behalf of the CHP," "embarked upon a campaign to have the CHP conduct an audit of the [post exchange] and to change the [fund]'s governing documents so as to make it subject to the CHP's control and oversight." Stanley and McLaughlin sought from Kropp the corporate and financial records of the fund and told her the CHP would conduct an audit of the fund's financial records. During this time period, "concerns were raised regarding the operation of the [post exchange]." Somebody had also alleged the post exchange was "an illegal operation," and had engaged in "'nefarious' acts." As the president of the fund's board, Stanley felt "it was [his] duty to investigate those concerns." Kropp opposed these actions because the fund was not a state agency and the CHP had no authority to review or monitor the fund's financial dealings.

In July 2005, the fund's board voted against conducting such an audit.

Over the next several months, CHP personnel sought the corporate and financial records of the fund and the private personnel records of the fund's employees.

On September 8, 2005, McLaughlin asked Kropp how much money was in post exchange bank accounts, who made decisions about spending that money, and what could be purchased with that money. When Kropp asked if she should be worried about the security of jobs of the post exchange employees, he said, "'no.'"

On September 12, 2005, Stanley forwarded Kropp an e-mail in which McLaughlin demanded that certain tasks be performed, including changing the fund's bylaws, preparing a business plan, calling a special meeting, and obtaining personnel information. If complied with, these demands would "essentially transfer control of the [fund] and the [post exchange] from the [fund's board] to the CHP." After reviewing the e-mail, Kropp met with Stanley to discuss her concerns about the CHP's impending audit of the post exchange. Stanley told her not to discuss the matter with the fund's board.

At the end of September 2005, Kropp turned over to an audit team from the CHP's internal affairs department all the post exchange's financial information and meeting minutes from 2002 to 2004. Kropp felt she "had no choice but to turn over the requested documentation." On October 31, 2005, and November 1,

2005, the CHP's internal affairs audit team requested more information from Kropp.

On November 2, 2005, Kropp met with the internal audit team, including Stanley. She "expressed concern over the privacy rights of the [post exchange] employees." After the meeting, she left a telephone message for one of the CHP commissioners (Brown) because she "wanted to ask him if he knew any particulars about the direction of the CHP audit team and if there was any information that was being kept from [her]." In the afternoon, Stanley instructed her by telephone to gather "all employment records" and "'hand over whatever they are requesting.'" When she questioned him and told him she had called Commissioner Brown, Stanley "exploded" and ordered her to his office. When Kropp reported to his office, Stanley told her he was "talking to [her] as [her] boss," chastised her for "jump[ing] the chain of command," and told her she had put him in a "bad situation." Kropp responded that she "did not have a chain of command as [she] did not work for the CHP and as the manager of the [post exchange], [she] did not have to answer to the CHP. [She] further explained that [she] felt [she] had no choice but to call Commissioner Brown given that Captain Stanley had never advised [the fund's board] of what had been transpiring with respect to the CHP's audit of the [post exchange] and had forbidden [her] from discussing it with the [fund's board] . . . ." "At that time, [she] told Captain Stanley that [she] was going to make it easy for him and just resign . . . ." He asked her not to, but she said there was

nothing he could do to prevent it. Kropp told Stanley she was "disappointed in him" in his desire to keep things secret from the fund's board and his behavior was contrary to his fiduciary duties. Stanley did not respond.

Later that day, Stanley came to Kropp's office with another CHP commissioner. Kropp stated the CHP should not be involved in the audit. The CHP commissioner agreed that the reason for the audit, i.e., the post exchange was "an illegal operation" had proven untrue, but he felt that a financial audit would still be "'beneficial.'" Again Stanley asked Kropp not to resign, and this time she agreed.

On November 4, 2005, Stanley met with Kropp. He apologized for his conduct on November 2 and said the decisions he had been making were in his capacity with the CHP and not as president of the fund's board.

On November 17, 2005, Kropp attended a meeting with Stanley and others regarding the "status and direction of the audit." The meeting began with McLaughlin stating that "he was having language added to the [post exchange] lease stating the [post exchange] would be subject to CHP rules," including giving one of the CHP commissioners "final approval over any action or decision made by the [fund's board]." The CHP attorney stated that if the post exchange did not agree to the terms set forth in the revised lease, "'We will shut you down.'"

The audit commenced in January 2006 and continued through February 2006. On January 18, 2006, Kropp turned over the documentation requested, including employee personnel files.

The audit proceeded despite the CHP's knowledge that the post exchange was not an illegal operation.

In March 2007, Lynch, on behalf of the CHP commissioner's office, asked Kropp to photocopy information regarding her salary that was contained in the fund's board meeting minutes. She told Lynch she did not have any obligation to turn over anything to the commissioner's office because it was not part of the fund's board, and he said, "'I know.'" She ended up photocopying the documents and leaving them on Lynch's desk because she believed that if she refused, she would be deemed "'difficult.'"

At the end of March 2007, Kropp left work "due to the increasing and unbearable stress of the CHP's intrusion and interference into the [fund's board] and [post exchange] operations, as well as [her] personal information."

## DISCUSSION

### I

#### *Overview Of The Anti-SLAPP Statute*

The Legislature enacted section 425.16 to address "a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) Under this section, a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue," is subject to a special motion to strike

"unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (*Id.*, subd. (b)(1).)

"Section 425.16 posits . . . a two-step process for determining whether an action is a SLAPP. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. (§ 425.16, subd. (b)(1).) 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e).'

[Citation.] If the court finds that such a showing has been made, it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim. [Citations.]" (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) "Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute--i.e., that arises from protected speech or petitioning *and* lacks even minimal merit--is a SLAPP, subject to being stricken under the statute." (*Id.* at p. 89.)

To demonstrate a probability of prevailing, the plaintiff must "demonstrate that the complaint is legally sufficient and supported by a sufficient *prima facie* showing of facts to sustain a favorable judgment if the plaintiff's evidence is credited. [Citation.] The court considers the pleadings and the supporting and opposing affidavits stating facts on which the liability or defense is based, and the motion to strike should be granted if, as a matter of law, the properly pleaded



facts do not support a claim for relief.” (*Wilbanks v. Wolk* (2004) 121 Cal.App.4th 883, 901.)

On appeal, “[w]e review the trial court’s rulings on an anti-SLAPP motion de novo.” (*HMS Capital, Inc. v. Lawyers Title Co.* (2004) 118 Cal.App.4th 204, 212.)

## II

### *The Causes Of Action Arose From Protected Activity*

Section 425.16, subdivision (e)(4) provides that activities protected by the anti-SLAPP statute include “any . . . conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.”

Kropp contends the trial court erred in finding that the causes of action arose from protected activity because the CHP’s actions were illegal and her performance was not at issue.

## A

### *Illegality*

Speech or petitioning activity that is “illegal as a matter of law,” is not protected, and “the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff’s action.” (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 320.) In *Flatley*, the plaintiff sued an attorney for civil extortion, intentional infliction of emotional distress, and wrongful interference with economic advantage. (*Flatley*, at p. 305.) The lawsuit was based on a letter from the attorney threatening to go public with a rape allegation unless the plaintiff paid \$100 million. (*Id.* at pp. 305–308.) The attorney filed an anti-SLAPP motion,

which the trial court denied. (*Flatley*, at p. 311.) The Court of Appeal affirmed, holding that as a matter of law the attorney's letter constituted criminal extortion and therefore was not protected. (*Ibid.*) The Supreme Court affirmed the Court of Appeal's decision, stating: "[W]here a defendant brings a motion to strike under [the anti-SLAPP statute] based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech . . . , but either the defendant concedes, or the evidence conclusively establishes, that the asserted protected speech . . . was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (*Flatley*, at p. 320.)

Invoking this principle, Kropp claims the CHP's actions were "illegal under the [f]und's governing documents and the Corporations Code because the [fund's b]oard . . . did not authorize the CHP's actions and the CHP exceeded the permissible scope of any inspection that might have otherwise been lawful." Kropp's argument conflates unauthorized activity with illegal activity.

The Supreme Court's use of the phrase "illegal" in *Flatley* "was intended to mean criminal, and not merely violative of a statute." (*Mendoza v. ADP Screening & Selection Services, Inc.* (2010) 182 Cal.App.4th 1644, 1654-1655.) This is because "*Flatley* discussed the attorney's underlying conduct in the context of the Penal Code's criminalization of extortion" and "a reading of *Flatley* to push any statutory violation outside the

reach of the anti-SLAPP statute would greatly weaken the constitutional interests which the statute is designed to protect . . . . [A] plaintiff's complaint *always* alleges a defendant engaged in illegal conduct in that it violated some common law standard of conduct or statutory prohibition, giving rise to liability, and we decline to give plaintiffs a tool for avoiding the application of the anti-SLAPP statute merely by showing any statutory violation." (*Mendoza*, at pp. 1654-1655.)

This is what we have here. Kropp's argument based on "illegal[ity]" focuses on the fund's governing documents and the Corporations Code. Namely, the fund's bylaws require a majority of the fund's board (three directors) to conduct business. And the Corporations Code authorizes members of a nonprofit corporation to inspect only the member's names, addresses, and voting rights (Corp. Code, § 6330, subd. (a)(1)) and the accounting books and meeting minutes (*id.*, § 6333) upon proper demand (*id.*, § 8330). According to Kropp, "the CHP not only took illegal action by refusing to obtain [b]oard approval, but it also exceeded the scope of any otherwise permissible inspection rights and failed to abide by the established procedures for inspections." While these factual assertions may be true, such unauthorized activity did not rise to illegal activity much less illegal activity as a matter of law, one of which was necessary to defeat the CHP's use of the anti-SLAPP statute under the principle invoked here. (See *Flatley v. Mauro*, *supra*, 39 Cal.4th at p. 320.)

B

*Issue Of Public Interest*

Although section 425.16 does not define the term, we have described the attributes of “‘an issue of public interest.’” (*Terry v. Davis Community Church* (2005) 131 Cal.App.4th 1534, 1546-1547; *Weinberg v. Feisel* (2003) 110 Cal.App.4th, 1122, 1132-1133.) Such a matter is more than one of curiosity and is an issue of concern “to a substantial number of people.” (*Weinberg*, at p. 1132.) In addition, “there should be some degree of closeness between the challenged statements and the asserted public interest,” and the focus of the speaker’s conduct should be the public interest rather than an effort to bolster a private controversy. (*Id.* at pp. 1132-1133.) This case exhibits these characteristics.

When CHP personnel requested the corporate and financial records of the fund, the personnel records of the fund’s employees, and information about Kropp’s pay, “concerns [had been] raised regarding the operation of the [post exchange].”<sup>2</sup> The post exchange is the source of income for the fund. And that income is used to purchase and maintain equipment at the CHP academy. The fund’s membership consists of approximately 10,000 to 15,000 people, including the entire CHP. The

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<sup>2</sup> Admittedly, the concern about the post exchange being an illegal operation had been proved untrue before the audit commenced. However, there were still allegations “concern[ing] . . . the operation of the [post exchange]” and “‘nefarious’ acts” within the post exchange.

operation of the post exchange is integral to the finances of the fund, which impacts all its members. The documents and records relating to the fund and its employees is therefore a matter of more than just curiosity and is an issue of concern "to a substantial number of people." (*Weinberg v. Feisel*, *supra*, 110 Cal.App.4th at p. 1132.)

Kropp points out there had been no issue with her competency or management of the post exchange, so the CHP's actions could not have been taken in connection with an issue of public interest. There was, however, still the concern about the operation of the post exchange and the "'nefarious' acts." Although these complaints were vague, the request for documents, personnel files, and salary information all related to post exchange finances and post exchange employees, which fall under the umbrella of post exchange "operations." The evidence provided by Kropp refuted any suggestion the request for documents and files was an effort to bolster a private controversy, such as one based on animosity between the CHP and Kropp. As Kropp highlighted in her opening brief, Stanley asked Kropp not to resign her position as manager of the post exchange and told her she should not be worried about post exchange jobs. On this record, Kropp has not demonstrated that the CHP's speech or petitioning activity fell outside of the rubric of "protected activity."

### III

#### *Kropp Has Not Demonstrated A Probability Of Prevailing*

Once the showing has been made that the defendant's speech or petitioning activity was "protected activity," the plaintiff must demonstrate a probability of prevailing, i.e., "the complaint is legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the plaintiff's evidence is credited." (*Wilbanks v. Wolk*, *supra*, 121 Cal.App.4th at p. 901.) "We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we accept as true all evidence favorable to the plaintiff and assess the defendant's evidence only to determine if it defeats the plaintiff's submission as a matter of law." (*Overstock.com, Inc. v. Gradient Analytics, Inc.* (2007) 151 Cal.App.4th 688, 699-700.)

With this standard in mind, we turn first to two defenses proffered by the CHP (i.e., the workers' compensation exclusivity rule and the statutory immunity of public employees) and then discuss each of Kropp's causes of action.

#### A

##### *A Third Party Such As The CHP Cannot Claim The Workers' Compensation Exclusivity Rule As A Defense*

The CHP contends the workers' compensation exclusivity rule precludes Kropp's lawsuit, as her exclusive remedy is the benefits provided by the workers' compensation scheme. Not so.

"Under the Workers' Compensation Act . . . , all employees are automatically entitled to recover benefits for injuries

'arising out of and in the course of the employment.'"

(*Privette v. Superior Court* (1993) 5 Cal.4th 689, 696-697.)

"When the conditions of compensation exist, recovery under the workers' compensation scheme 'is the exclusive remedy against an employer for injury or death of an employee.'" (*Id.* at p. 697.)

The Workers' Compensation Act does not apply here because the fund was Kropp's employer and Kropp's argument is that the CHP and not the fund was the one that engaged in the wrongful acts. There is nothing in the statutory scheme that allows a third party such as the CHP here to claim the workers' compensation exclusivity rule as a defense to a lawsuit.

B

*Government Code Section 821.6, Which Addresses  
Immunity Of Public Employees, Is Inapplicable*

Invoking Government Code section 821.6, the CHP contends Kropp's lawsuit was barred because "public employees are immune from liability for instituting or prosecuting judicial or administrative proceedings." That code section states: "A public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." (Gov. Code, § 821.6.)

Government Code section 821.6 does not apply here for at least two reasons. One, Kropp was not suing the CHP employees, but rather, the CHP. By its terms, this code section applies to immunize the "public employee" from liability. Two, there was no "judicial or administrative proceeding." Rather, the at-

issue acts were an audit and request for documents by employees of the CHP, and neither the employees of the CHP nor the CHP had authority over the fund to institute any judicial or administrative proceeding.

C

*Kropp Has Not Shown A Probability Of Prevailing On Her  
Intentional Infliction Of Emotional Distress Cause Of Action*

A cause of action for intentional infliction of emotional distress requires a showing of extreme and outrageous behavior beyond all bounds of decency. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 945-946, disapproved on another point in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 574, fn. 4.) "'Behavior may be considered outrageous if a defendant (1) abuses a relation or position which gives him power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. [Citations.]'" (*Agarwal*, at p. 946.)

Kropp claims the CHP's behavior fell under this first test, because Stanley as the "rogue" president of the fund's board instructed her to take action that she knew was wrongful and unlawful, such as keeping the remaining board members "in the dark" about the CHP's actions, participating in an unauthorized audit, and turning over personnel files to those not entitled to view them. And when she voiced her concerns, she was subject to



"false and hostile" accusations and threats that the post exchange would be shut down.

These acts do not rise to the level of outrageous conduct exemplified by the cases that have applied this test. (See, e.g., *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 897, 908-909 [after the vice-president of the defendant bank embezzled funds that were supposed to be credited to the plaintiffs' business account, the bank failed to inform the plaintiffs they would not receive further loans, caused the plaintiffs to assign their accounts receivable to the bank and to execute excessive guarantees and security agreements by misrepresenting that credit would be extended, and publicly ridiculed the plaintiffs using profanities, resulting in the failure of the plaintiffs' established business]; *Agarwal v. Johnson, supra*, 25 Cal.3d at pp. 941-944 [in an unprovoked incident, plaintiff's supervisor twice called him a "'black nigger, member of an inferior race,'" threatened to terminate him for no reason, and then after terminating him, fabricated reasons for doing so].)

The most that can be said for the CHP's actions is the following: CHP personnel directed Kropp to turn over the financial records of the post exchange and the personnel records of its employees at a time when concerns had been raised about the operation of the post exchange and its engagement in "'nefarious' acts." She was told not to worry about the security of the jobs of post exchange employees. When she voiced concern about turning over the requested documents, her

"boss" exploded at her and told her not to discuss the matter with the fund's board. He then urged her not to resign multiple times and apologized to her. A CHP attorney later told her the post exchange would be shut down if the post exchange did not agree to terms of a revised lease. She turned over the requested documents and the audit proceeded, despite the CHP's knowledge the post exchange was not an illegal operation.

While the CHP personnel's actions were arguably improper and unauthorized, this conduct did not rise to a level of outrageousness necessary to state a cause of action. The "threat[]" to which Kropp points, i.e., shutting down the post exchange, was not tied to turning over documents, but rather, to signing a lease. And, Kropp has not tied the "false and hostile" accusations by Stanley relating to her turning over any of the documents to her acquiescence to any of his demands. Stanley's outburst came two months before Kropp turned over the employee personnel files. In any event, "'mere insults'" and "'threats'" of this nature do not constitute outrageous behavior. (See *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494, 496.) We conclude Kropp has not established that her claim for intentional infliction of emotional distress had the minimal merit required to survive a special motion to strike.

D

*Kropp Has Not Shown A Probability Of Prevailing On Her  
Invasion Of Privacy Cause Of Action*

To state a cause of action for invasion of privacy in violation of the state constitutional right to privacy, the

plaintiff must establish: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; (3) and conduct by the defendant constituting a serious invasion of privacy. (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.)

The gravamen of Kropp's cause of action was that CHP personnel "sought to review [her] private personnel file" which they had no right to do and they "intimidated and coerced" her into giving them the information contained in the file.

The CHP responds that Kropp had no privacy interest in the financial records of the fund, the only information requested from her personnel file concerned her salary and raises, which was not protected, and in any event, "there is no authority for the proposition that the California Constitution permits a claim for monetary damages for a violation of privacy rights." These arguments are based on misreading of the facts and law.

Kropp's invasion of privacy claim was based on the CHP's intrusion into her entire personnel file, not just her salary information. According to Kropp's declaration, Stanley asked for "all employment records" and she complied by turning over to the auditors "employee personnel files." This court has readily accepted the idea that employee personnel records are protected by the state constitutional right of privacy. (*El Dorado Savings & Loan Assn. v. Superior Court* (1987) 190 Cal.App.3d 342, 345.)

As for the CHP's argument that Kropp's cause of action lacked merit because the California Supreme Court has yet to decide whether a violation of the privacy clause permits an action for damages and it is unlikely to do so in a manner favorable to Kropp, it also goes nowhere. The cases to which the CHP cites, *Richardson-Tunnell v. Schools Ins. Program for Employees (SIPE)* (2007) 157 Cal.App.4th 1056 and *Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300 do not resolve the issue. The former simply noted that the California Supreme Court in *Katzberg* stated that it had not yet considered whether violation of the privacy clause permitted an action for damages and then resolved the cause of action on immunity grounds. (*Richardson-Tunnell*, at p. 1066.)

The problem with Kropp's invasion of privacy cause of action, however, is a lack of evidence to support the third element of the cause of action, i.e., *conduct* by the CHP constituting a serious invasion of privacy. Kropp alleged she was "intimidated and coerced" by the CHP into providing her personnel file, but the facts do not bear this out. The facts that led up to Kropp turning over her personnel file were as follows: In mid-September 2005, Stanley forwarded Kropp the e-mail in which McLaughlin demanded personnel information. On November 2, 2005, Stanley instructed Kropp via telephone to gather all employment records and "hand over whatever they are

requesting.'" That day, Kropp questioned Stanley and informed him she had called Commissioner Brown to ask about the audit. Stanley "exploded," and chastised her for jumping the chain of command, and told her she had put him in a "bad situation." She responded that she had no chain of command because she did not work for the CHP. She told him she would resign, but he asked her not to. She told him she was "disappointed in him." Later that day, Stanley again asked Kropp not to resign. On November 4, 2005, Kropp apologized for his conduct. On November 17, 2005, an attorney for the CHP stated in a meeting at which Kropp was present that the post exchange would be shut down if it did not agree to the terms in a revised lease. On January 18, 2006, when the audit began, Kropp turned over the personnel files.

These facts demonstrate it was four months between the initial request for the personnel files and the time Kropp turned them over. It was two months between when Stanley "demanded" she turn them over and the time she turned them over. Even after this demand, Stanley apologized to Kropp and asked her to change her mind about resigning. And, as mentioned before, the threat to shut down the post exchange had nothing to do with the personnel records. Rather, it had to do with agreeing to terms of a lease. On this record, Kropp cannot show that the release of her personnel file was due to the conduct of the CHP.

E

*Kropp Has Not Shown A Probability Of  
Prevailing On The Violation Of Her Constitutional  
Rights (Civ. Code, § 52.1) Cause Of Action*

"Civil Code section 52.1 authorizes an action at law, a suit in equity, or both, against anyone who interferes, or tries to do so, by threats, intimidation, or coercion, with an individual's exercise or enjoyment of rights secured by federal or state law." (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 331.) Kropp contends she had a right to privacy in her personnel records and the CHP invaded those rights by demanding inspection of her records without approval of her employer and accomplished this by pattern of threats that the post exchange would be shut down or that she would be deemed difficult.

These allegations are insufficient as a matter of law to rise to the level of "threats, intimidation, or coercion" as that term is understood in Civil Code section 52.1. According to subdivision (j) of Civil Code section 52.1, "[s]peech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat." Kropp makes no allegation nor provides any evidence that the speech here had these attributes.

DISPOSITION

The order granting the special motion to strike is affirmed. The CHP shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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ROBIE, J.

We concur:

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RAYE, P. J.

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HULL, J.